

## MINUTES – FEBRUARY 9, 2004

The Caswell County Board of Commissioners met in special session at Piedmont Community College in Roxboro, North Carolina at 7:00 p.m. on Monday, February 9, 2004. The purpose of the meeting was to meet jointly with the Roxboro City Council, Person County Board of Commissioners, and Yanceyville Town Council to discuss concerns of all parties relating to the Dan River Water Project. Members present: Mel O. Battle, Chairman, Larry G. Hamlett, Vice-Chairman, Nathaniel Hall, Jack W. Hooper, Kenneth D. Travis, and George W. Ward, Jr. Absent: Cathy W. Lucas. Roxboro City Council Members present: Steve Joyner, Mayor, Council Members Henry Daniel, Samuel Spencer, James Allen, Marilyn Newell, and Mark Phillips. Person County Board of Commissioners present: Johnny Lunsford, Chairman, Board Members Roy Holler, Eugene Berryhill, Margaret Bradsher, and Jimmy Clayton. Yanceyville City Council Members present: Dan Printz, Mayor, Council Members Margie Badgett-Lampkin, Curtis Davis, Don Donevan, and Alvin Foster. Also present: Jeffrey H. Earp, Caswell County Manager, Robert V. Shaver, Jr., Caswell County Attorney, Jim Freeman, Roxboro City Manager, Tommy Warren, Roxboro Assistant City Manager, Nick Herman, Roxboro City Attorney, Don Garbrick, Engineer, Pease & Associates, Cheryl Barnette, Roxboro City Clerk, Jimmy Overton, Roxboro City Finance Officer, Steve Carpenter, Person County Manager, Jamie Long, Person County Attorney, Faye Fuller, Person County Clerk to the Board, Steve Smith, Yanceyville Town Manager, R. Lee Farmer, Yanceyville Town Attorney, Darrell Russell, Yanceyville Town Engineer, Gordon Bendall representing The Caswell Messenger, Billy Baker representing The Danville Register & Bee, and Winkie Wilkins representing The Courier Times. Wanda P. Smith, Caswell County Clerk to the Board, recorded the minutes.

### CALL TO ORDER

City of Roxboro Mayor Steve Joyner called the meeting of the Roxboro City Council to order

Person County Chairman Johnny Lunsford called the meeting of the Person County Board of Commissioners to order.

Town of Yanceyville Mayor Dan Printz called the meeting of the Yanceyville Town Council to order.

Caswell County Chairman Mel Battle called the meeting of the Caswell County Board of Commissioners to order.

### MOMENT OF SILENT PRAYER

Roxboro Mayor Steve Joyner requested that the governing bodies observe a Moment of Silent Prayer.

## PLEDGE OF ALLEGIANCE

Roxboro Mayor Steve Joyner requested that the governing bodies join together in the Pledge of Allegiance.

## MEETING PURPOSE

Roxboro Mayor Steve Joyner welcomed the governing bodies and stated that they were present to resolve an issue that is preventing each of them from doing something historic for their constituents. Mayor Joyner added that together, the governing bodies represent 60,000 North Carolinas and the governing boards hold their future in its hands. Mayor Joyner stated that they have before them an opportunity to put these differences aside and assure that there is an adequate source of water for those citizens for the next 50 years. Mayor Joyner added that this meeting represents their last best chance and was convinced that as public servants they want to do noble things for the people they represent, the people who have placed their faith in all of them as leaders. Mayor Joyner stated that he would like to challenge each one to build upon this common goal and use this foundation to work together and arrive at a resolution that will be a win for everyone. Mayor Joyner added that he encouraged this meeting because they are neighbors and they do not need to use taxpayer resources fighting each other in a courtroom. Mayor Joyner stated that the people they represent would be better served by them working together for the betterment of all. Mayor Joyner added that he personally did not want a panel of Judges who do not reside in Person or Caswell Counties to decide their future. Mayor Joyner stated that collectively, their boards are made up of 24 elected officials, and as elected officials, they are expected to protect the rights of their constituents. Mayor Joyner added that they are also expected to resolve their differences and to fail to do this means they have failed the public as their servants. Mayor Joyner stated that circumstances have changed since this project was originally introduced, there is no longer a cash cow to pay for this project and there are no revenues to share, there only remains an opportunity to provide a safe and secure source of water for their constituents. Mayor Joyner added that the decision to resolve their differences is in their hands.

## PROJECT BACKGROUND AND HISTORY

Mr. Tommy Warren, Roxboro Assistant Manager gave a power point presentation on the background of how they have reached the current point. Mr. Warren reported that in 1998 the City of Roxboro and Person County had a Comprehensive Water Study conducted of their water needs and their future water needs. Mr. Warren added that they entered into a Joint Agreement between the City and County to extend water and sewer in the County. Mr. Warren stated that this study led them to look for a future source of water supply and in 1999 met with the NC Division of Water Quality. Mr. Warren added that they looked at Hyco Lake and the Mayo River and were advised by DWQ to talk to CP&L. Mr. Warren stated that after one year of negotiations, CP&L turned them down and said that there was no water to share. Mr. Warren stated that DWQ then looked at the map and advised them to look at the Dan River or Kerr Lake. Mr. Warren stated that the Dan River is half the distance of Kerr Lake and from a cost standpoint, they began to

look at the Dan River. Mr. Warren noted that other cities and water authorities were already getting water from Kerr Lake and it may be more difficult to acquire water, permit wise. Mr. Warren added that in looking at the Dan River, it had the capacity needed and according to the State, the seven consecutive days of lowest flow in a ten-year period is 275,000,000 gallons per day and to that date, that figure has not changed and is an adequate supply. Mr. Warren reported that in 2001, Dominion Energies came to Roxboro and said they wanted to build a power plant and needed 8.1 million gallons of water and with their current demand, this exceeded their supply. Mr. Warren added that at that point they hired Pease Associates to begin the process of permitting the Dan River for water. Mr. Warren noted that at this point they had already looked at and established their need for water and that this need could be met by the Dan River prior to Dominion coming, but Dominion just sped up the process.

Mr. Warren reported that this is a state-controlled process and all of the steps are spelled out by the State and you have to follow their rules and regulations. Mr. Warren added that the State owns and controls all of the surface waters in the State and they have complete control of who withdraws the water, if the need for the water is justified, the amount of water withdrawn, where the water can be withdrawn, when the water can be withdrawn, and how the water can be withdrawn. Mr. Warren noted that this is a State function, not a city or county function. Mr. Warren reported that this process is typically a five-year review process and it basically consists of two phases, one being the legislative phase which is when all the documentation has been submitted and the Environmental Management Commission approves it, then the Legislature reclassifies it as a drinking supply watershed, then a permit is obtained for authorization to construct from DWQ. Mr. Warren stated that when all of this is completed, then the process can begin to build a structure to withdraw water. Mr. Warren stated that both of these agencies require that an Environmental Assessment be completed, and based on this evaluation, it is determined whether an Environmental Impact Statement is required. Mr. Warren noted that the Environmental Assessment serves as a blueprint for the entire project and addresses the future needs for water and the amount, it also determines whether the project will adequately serve the needs of the area, whether the withdrawal will be made in an environmentally safe manner, that the infrastructure constructed on the river is built in an environmentally safe manner, and that the infrastructure built complies to State standards and verifies that the project is workable. Mr. Warren stated that if any of the items mentioned do not meet the State's approval or satisfaction, they can stop the entire process. Mr. Warren added that the State also encourages Interlocal Agreements between governments in developing water supply projects due to the long-term need for future water and the tremendous cost for developing these needs. Mr. Warren stated that once the permit is issued, the applicant is assured of the availability of water because the permit can be renewed every five years. Mr. Warren added that if the project is abandoned, the process has to be started all over from the very beginning. Mr. Warren reported that as a condition of the permit, a Watershed Protection Ordinance has to be adopted and has to be adopted by the County in which the watershed resides. Mr. Warren noted that currently Caswell County, Person County, and the City of Roxboro all have Watershed Protection Ordinances. Mr. Warren added that the State also requires that the site be zoned and controlled in order to protect the site, to make sure that it is maintained

in an environmentally safe manner for the withdrawal of drinking water. Mr. Warren added that the City of Roxboro submitted the initial application for this permit in March, 2002 and the initial request for withdrawal was 10 million gallons. Mr. Warren reported that the State makes the final determination as to how much water can be withdrawn. Mr. Warren stated that the Environmental Assessment was submitted in the fall of 2002 and in February, 2003, Dominion announced that it was not coming to Person County. Mr. Warren added that at that time they made a decision to continue the project with the reasons being that Roxboro and Person County had already spent over \$600,000 on the permitting process alone, the State agencies reviewing this were already well under way, and the engineers advised them that if they stopped the process they may not be able to go back to the Dan River in the future because they would have to start the five-year process all over, they do not know what the future environmental regulations may be, and Virginia or some other water user such as Eden, who has made an application to withdraw water from the Dan River, could obtain permits that would limit their capacity in the future to withdraw water from the Dan River. Mr. Warren stated that the permit now locks in the future for the region and allows a water supply for the next fifty years not only for Roxboro and Person County, but also for Yanceyville and Caswell County. Mr. Warren added that the water needs for Person County and Caswell County have not changed just because Dominion went away. Mr. Warren reported that according to the water study done for Roxboro and Person County prior to Dominion coming, the fifty-year need for Roxboro and Person County was 22,000,000 gallons per day with Yanceyville and Caswell County's fifty-year need being 7,000,000 gallons per day. Mr. Warren noted that the current capacity available is 11,000,000 gallons per day for Roxboro and Person County and 6.3 million gallons per day for Yanceyville and Caswell County. Mr. Warren added that Caswell County did a water study that indicates that there is a projected demand for 2.5 million gallons. Mr. Warren noted that the Dan River provides a means for future growth, attracting industry, and provides an emergency supply if needed. Mr. Warren stated that if the project were abandoned, Roxboro and Person County would lose over \$600,000, the region would lose an opportunity to secure the Dan River for a future water supply, there would be no plan to serve the future needs of the region, there would be no water supply to attract future industry, and there would be no emergency water supply.

Mr. Warren reported that the status of the project to date is: 1) the second revised draft of the Environmental Assessment was submitted in July, 2003; 2) the Environmental Assessment made a request of 10 million gallons per day and provided an assessment for covering the withdrawal of 22 million gallons some time in the future; 3) the property for the intake site has been acquired at a cost of approximately \$100,000 and has been zoned as a water supply distribution system; 4) a State-mandated Watershed Protection Ordinance has been prepared; 5) the State has been notified of the land acquisition, the zoning, and the Ordinance; and 6) the reclassification of the Dan River will take place this summer at the earliest.

Mr. Warren reviewed the following segments included in the cost analysis: Segment 1) Intake Site; Segment 2) Section of line in Caswell County; and Segment 3) Section of line in Person County, all at a cost of \$24 million; Segment 4) Intake Site to Yanceyville

costing \$3 million; Segment 5) Intake Site to Milton costing \$650,000; Environmental Assessment and Permitting over \$600,000; Land Acquisition of approximately \$100,000 for a total of \$28,350,000. Mr. Warren noted that of this total, Yanceyville's cost is \$3,650,000 and Roxboro and Person County's cost is \$24,700,000. Mr. Warren added that the water study for Caswell County conducted by Rivers & Associates estimated that the cost of putting in a water system for Caswell County could be as much as \$41 - \$46 million.

### WATER AGREEMENT – PRINCIPLES AND FEATURES

Mr. Nick Herman, Roxboro City Attorney, came before the Board and discussed the process by which the Interlocal Agreement was entered into, the principles underlying it and the principles that shape the specific provisions of the Agreement, and summarized the principle features of the Interlocal Agreement.

Mr. Herman reported that after the governing bodies of Yanceyville, Roxboro, and Person County authorized its staff to prepare an Interlocal Agreement, a committee was appointed. Mr. Herman added that the committee consisted of the Managers of all three governing bodies, the lawyers for the three governing bodies, and technical experts which included Mr. Tommy Warren, Mr. Darrell Russell, Yanceyville's Town Engineer and Mr. Don Garbrick, Pease & Associates Project Engineer.

Mr. Herman reported that the first reality the Committee had to face was that the State controls all of this because it is their river and the Committee had to deal with the whole complex of State law controlling what was being attempted to be put together. Mr. Herman stated that it was also absolutely necessary that the Committee in structuring the Agreement be advertent to State public policy. Mr. Herman added that the State wants to promote regional water systems, wants to promote long-term planning, wants agreements and water systems that are not only planned for the long-term, but will satisfy long-term needs, they want the systems large enough to be cost effective, and they want to preserve the environment. The question that the Committee consistently asked of itself was: 1) What each governmental body could contribute to the project; and 2) What could each governmental body best contribute? Mr. Herman noted that this would not be a for-profit enterprise, but a cooperative enterprise among the different entities.

Mr. Herman stated that it is important to remember that not only is water being drawn out of the Dan River as a future critical source, but water flows in reverse and there are two other sources of water – Lake Roxboro and Lake Isaac Walton; 2) these lines can be tapped onto; 3) this is strictly an inter-County system; and 4) this is an expandable system. Mr. Herman emphasized that the withdrawal request was and always has been 10 million gallons per day. Mr. Herman reported that the State's evaluation of this project is being evaluated on the basis of a potential withdrawal of water of up to 22 mgd. Mr. Herman reviewed who constructs, operates, maintains, insures, and repairs under the Agreement and how it was decided. Mr. Herman noted that it was decided on who had the technical experience and the primary user. Mr. Herman stated that construction, operation, maintenance, insurance, and repairs of Segments 1, 2, and 3 rests with the City

of Roxboro, while these same responsibilities for Segments 4 and 5 rests with Yanceyville. Mr. Herman stated that the determination of who pays for what was based on 1) comparative financial ability; 2) who has the construction, operation, maintenance, insurance and repair responsibilities; and 3) special State laws governing what local governments can purchase real property. Mr. Herman noted that these were the basic types of criteria considered in determining who would pay for what. Mr. Herman added that the \$600,000 for the cost of permitting would be paid for by Roxboro and Person County. Mr. Herman stated that the \$6 million cost of the infrastructure for Segments 1, 2, and 3 would be paid for by Roxboro and Person County. Mr. Herman added that the \$3.6 million cost of the infrastructure for Segments 4 and 5 will be paid for by Yanceyville. Mr. Herman stated that to help defray this cost for Yanceyville, Roxboro had agreed to pay three cents per 1,000 gallons of water drawn from the Dan River. Mr. Herman added that the cost of the real property acquisition in Segment 1 and 2 had to fall with Yanceyville because legally, Roxboro could not purchase the real property without the permission of Caswell County and this had not developed, and Yanceyville was the only entity that did not need permission to purchase the property. Mr. Herman noted that Roxboro would purchase the real property needed in Person County for Segment 3. Mr. Herman added that Yanceyville would be responsible for Segments 4 and 5 because it would be in the best position to decide where the easements needed to run and would assume purchase responsibilities.

Mr. Herman raised the question of who owns the real property and the infrastructure. Mr. Herman stated that the fundamental principles that govern ownership are: 1) who paid for the property; 2) who is responsible for the construction, operation, maintenance, insurance, and repairs; and 3) the requirement of bond counsel. Mr. Herman stated that title to real property in Segment 3 would be held in the names of Roxboro and Person County during the time that the debt service is being paid for this and after the debt service has been paid, the title will be held by Roxboro exclusively. Mr. Herman added that title to Segments 4 and 5 will be held by Yanceyville exclusively. Mr. Herman stated that because there was no consent for Roxboro or Person County to purchase Segment 1, Yanceyville had to purchase it and it has exclusive title to Segment 1 and in order to prevent the future selling of this segment and preventing Roxboro and Person County from getting water, this was addressed in the Interlocal Agreement which included a large liquidation damages provision to Roxboro and Person County. The Agreement further states that if Roxboro or Person County could ever have a title interest in Segment 1 along with Yanceyville, that Yanceyville would provide that title interest and there would be no liquidation damages provision because Roxboro and Yanceyville would both be controlling the intake site and both would be protected against future "rogue Councils". Mr. Herman added that the same would be true for Segment 2 with Yanceyville purchasing it, and if things change, exclusive title would shift to Roxboro because Roxboro is the primary user of that line.

Mr. Herman reported that the title to the Infrastructure for Segments 1, 2, and 3, which includes the pumping station and pre-treatment facility is held by Person County and Roxboro during Debt Service payments, and after the Debt Service is paid, title is held

solely by Roxboro. Mr. Herman stated that title to the Infrastructure for Segments 4 and 5 is held by Yanceyville.

Mr. Herman stated that the Agreement refers to a 40-year term which was not arrived at by the Committee, but is addressed by a Statute that states that the initial term for an Interlocal Agreement cannot exceed 40 years. Mr. Herman added that the Agreement does refer to the obligations of having a Watershed Protection Ordinance, and one was drafted based entirely upon State requirements.

### PRESENTATION QUESTION PERIOD

There was an open presentation question and answer period and discussion.

Commissioner Hall noted that Mr. Herman stated that one of the things that the Committee considered during its deliberations and prior to putting together the Agreement was what could each governmental body contribute and how could they contribute it. Commissioner Hall asked why there was no mention during Mr. Herman's presentation of Caswell County or what it could contribute. Commissioner Hall noted that the presentation started in 1999 with DWQ and came forward; however, Caswell County was left out until 2004. Commissioner Hall asked why the Caswell County Board of Commissioners are here tonight.

Roxboro Mayor Joyner stated that the Caswell County Board of Commissioners is present because there are some choices to be made. Mayor Joyner added that they can continue on the current path and Caswell County can appeal the decision in the courts; Caswell County can drop the appeal and do nothing and it would receive a \$6 million water intake facility located in Caswell County and the infrastructure; or it can join the Agreement in some way and maybe elect to contribute something.

Commissioner Hall asked what is it that Caswell County is expected to contribute to this whole process, to the whole regional concept; and again, why is the Board of Commissioners here. Commissioner Hall added that he understands the Board could remove its opposition, but other than that, why are they talking. Mayor Joyner answered that this is up to the Caswell County Board of Commissioners and would it want to contribute anything. Mayor Joyner stated that, obviously, money is something that needs to be contributed if the County wished to be a part of the Agreement and the County would get an allotment of water from the Agreement. Commissioner Hall stated that the motive seems to him to be more of removing opposition than anything else and he is looking for the "anything else". Mayor Joyner stated that if the County wants a guarantee of a source of water for the citizens of Caswell County, that is why they are here, either by being a part of the Agreement or not being a part of the Agreement.

Mr. Herman stated that if Caswell County chose to become a participant in the project this could be accomplished by including certain responsibilities in the current Agreement or there could be a separate Agreement between Yanceyville and Caswell County and those responsibilities could be set out in that Agreement.

Commissioner Hall stated that in Mr. Herman's presentation he mentioned that there would have to be a Watershed Protection Ordinance, the area around the intake would have to be zoned to protect the watershed, and that there would have to be a reclassification and that would take place this summer. Commissioner Hall asked if this is something that the State and the Town of Yanceyville can do. Mr. Warren answered that the Watershed Protection Ordinance would have to be adopted by Caswell County since the watershed itself is in Caswell County, and if Caswell County does not do it, then the State would do it. Mr. Warren added that the reclassification will not happen until after the Environmental Management Commission makes a ruling on their request for the intake. Commissioner Hall asked if the zoning was being taken care of by the Town of Yanceyville. Mr. Warren confirmed that the Town of Yanceyville would take care of the zoning.

The Boards held a brief recess.

Commissioner Hall asked if the condemnation route is taken, who does this. Mr. Warren answered that Yanceyville would be responsible for Segment 2. Mr. Herman added that under the present Agreement, because the Town of Yanceyville is responsible for acquisition, they would have the power of condemnation.

In discussing ownership of property, Commissioner Hall differed with Mr. Herman and stated that this is about control. Commissioner Hall added that Mayor Printz asked why all four bodies involved could not own the real property and Mr. Herman gave a speech as to why this could not happen and used the term "rogue Councils" three or four times and he only addressed "rogue Councils" outside of Roxboro. Commissioner Hall stated that this is all about control and this issue needs to be dealt with and then get down to basics. Commissioner Hall added that if there was a good faith effort, money would not be the first thing to talk about, they would talk about a regional water authority and planning, then they would talk about money. Commissioner Hall stated that there just is not a good faith effort. Mayor Joyner stated that all of this has already happened, but now they are dealing with the situation as it exists and they are trying to fix it. Commissioner Hall stated that it can be fixed without referring to "rogue Councils" three or four times, without saying who can afford what, rather talking about a regional authority and moving forward.

Commissioner Hall stated that there is a concept among the Commissioners that one Board cannot tie the hands of future Boards so that means that these issues will have to be addressed again five, ten, or twenty years down the road, so to try to lock something down so that no one can ever look at it is not something that they would want anyway, and that is why the concept of a regional authority would make more sense. Commissioner Hall added that a regional authority could be three or four governmental bodies that jointly agree that they need water and are going to pursue it in a certain way and not start out saying that one cannot afford it and not talking to one body because they may have a "rogue Council" two or three years down the road.



Mr. R. Lee Farmer, Yanceyville Town Attorney, stated that the philosophical question that Caswell County has to answer is whether they want to be a partner in this process or continue to be an obstacle and they have to come to that decision before there can be any meaningful discussion. Mayor Joyner stated that it appears that the Caswell County Board of Commissioners is very open to discussion concerning this.

Mayor Joyner asked if there might be an interest in having the Caswell County Manager and Attorney meet with the Managers and Attorneys of the other entities and Engineers and determine how they could come to a solution for providing water for everyone.

Chairman Battle stated that he felt his Board would like to know their options, but he first needed to know what his Board would like to do. Chairman Battle felt the suggestion for a meeting with the Managers as stated by Mayor Joyner would be the best way for his Board to make a decision. Chairman Battle stated that he has reviewed the Agreement and has a number of questions that need to be answered. Mayor Joyner stated that the invitation is there for the Caswell County Board of Commissioners to meet with the other Managers and Attorneys to address these issues. Chairman Battle informed the group that the Caswell County Board of Commissioners would take this discussion into consideration and place this item on their February 16<sup>th</sup> agenda at which time a decision would be made. Chairman Battle stated that he hoped the Board could come to some resolve. Mayor Joyner invited the Board to participate in this process.

Mr. Steve Smith, Yanceyville Town Manager, stated that in conversations with Mr. Carpenter and Mr. Herman and with their legal counsel, it was their understanding that leaving the meeting tonight there would be a 30-day timeframe in which a decision will be made by Caswell County to 1) drop the pending lawsuit; 2) establish a partnership with Yanceyville for providing and constructing water lines throughout Caswell County; and 3) an Agreement established between Yanceyville and Caswell County. Mr. Smith stated that it was his understanding that the reason they came tonight and he recorded in a memo to his Mayor and Council that the reason they came tonight was to get a commitment from Caswell County to drop litigation within the next 30 days, starting from tomorrow, a side Agreement would be established between Caswell County and Yanceyville, and a Water Agreement would be reached such as that entered into by Roxboro and Person County.

Chairman Battle expressed his feelings that these comments and expectations should have been stated at the beginning of the meeting.

Commissioner Hall stated that what he has heard the Yanceyville Town Manager say and what they have agreed to is a little bit different. Commissioner Hall added that he heard Chairman Battle say that this issue would be on the Board's February 16<sup>th</sup> agenda for discussion, but he has heard no commitment from Chairman Battle. Commissioner Hall stated that tonight was the first time he had heard as a Commissioner the three items mentioned by the Yanceyville Town Manager. Commissioner Hall added that he did not want any great expectations from anyone because he had never heard until tonight the comments made by the Town Manager and that is not why they were here.

Mayor Joyner encouraged the Caswell County Board of Commissioners to discuss this issue at its February 16<sup>th</sup> meeting.

THE ADJOURNMENT

At 10:05 p.m. Commissioner Ward moved, seconded by Commissioner Travis to adjourn the meeting. The motion carried unanimously.

Mayor Printz adjourned the Yanceyville Town Council.

Chairman Lunsford adjourned the Person County Board of Commissioners.

Mayor Joyner adjourned the Roxboro City Council.

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Wanda P. Smith  
Clerk to the Board

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M. O. Battle  
Chairman

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